

LEGAL ISSUES FOR INTERNATIONAL MILITARY STUDENT OFFICERS

**Defense Institute of
International Legal Studies**



Summary

- **IMET Training Law**
- **Jurisdiction**
- **Disciplinary Actions**
- **Liability Considerations**
- **Political Asylum**
- **Legal Assistance**



IMET Legal Authority

- **International Military Education and Training**
 - **Furnish Military Education & Training**
 - **to Military Personnel**
 - **to Related Civilian Personnel Concerning**
 - **defense resource management**
 - **civilian control of the military**
 - **military/civilian law enforcement**
counternarcotics cooperation
 - **improve military justice systems and procedures**



IMET Legal Authority

– IMET Funding and Student Numbers

- FY00 \$49.8 m 8,216
- FY01 \$57.7 m 9,655
- FY02 \$65.0 m 10,307



FMS Training

- **Section 21 AECA - 22 USC 2761**
 - **Funding - must be in dollars**
 - national cash
 - foreign military financing
 - other



SA Training - Legal

- **Section 660 FAA - 22 USC 2420**
 - **Police Training**
- **Debt Payment**
 - **Section 620(q) - 6 months (FAA)**
 - **Section 612 [PL 106-429] - 12 months (funds)**
- **Section 617 - 22 USC 2367**
 - **Termination of Assistance - 8 months**



Jurisdiction

- In general, every nation has exclusive jurisdiction over persons within its own territory.
- However, a nation may grant immunity from its laws to designated persons by international agreement.



Jurisdiction

- Primarily jurisdiction is territorial.
- Other recognized international jurisdictional basis include -
 - ▶ nationality
 - ▶ protective
 - ▶ universality
 - ▶ passive personality



Civil & Criminal Jurisdiction

- **Who has the authority?**
- **Absent diplomatic immunity or status of forces agreement — International Military Students and their resident family members are subject to all applicable U.S. civil and criminal laws.**



Civil & Criminal Jurisdiction

- **U.S. Federal Laws**

- some crimes committed on military bases
- a few crimes committed off-base
- generally no civil suit jurisdiction
- NO UCMJ jurisdiction

- **U.S. State Laws**

- possibly crimes committed on military bases
- all crimes committed off-base
- civil suit jurisdiction



Diplomatic Immunity

- **Members of the Staff of a Diplomatic Mission**
 - **Diplomatic Agents**
 - **Administrative and Technical Staff**
 - **Service Staff**
- **Most Family Members**



Diplomatic Immunity

- Diplomatic Agent
 - Accredited Diplomatic Staff
- Administrative and Technical Staff (A&T)
 - Members of the mission who employed in administrative and technical service
- Service Staff
 - Members of mission involved in domestic service



Diplomatic Agent Immunities

- **Mission Diplomatic Staff & Their Families**
 - **Criminal Immunity**
 - immune from arrest, detention, criminal prosecution or punishment
 - official or unofficial acts
 - **Civil Immunity**
 - immune from civil and administrative jurisdiction
 - official acts and most unofficial acts



Administrative & Technical Staff Immunities

- **Mission Administrative & Technical Staff & Their Families**
 - **Criminal Immunity**
 - immune from arrest, detention, criminal prosecution or punishment
 - official or unofficial acts
 - **Civil Immunity**
 - immune from civil and administrative jurisdiction
 - official acts only



Service Staff Immunities

- **Service Staff Only**
 - **Criminal Immunity**
 - immune from arrest, detention, criminal prosecution or punishment
 - official acts only
 - **Civil Immunity**
 - immune from civil and administrative jurisdiction
 - official acts only



Diplomatic Immunity

- **Application to Military Personnel on the Staff of a Diplomatic Mission**
 - Diplomatic agent status usually only for military attaches
 - Other military officers usually assigned as administrative & technical staff
 - military enlisted personnel may be A & T or service staff



Diplomatic Immunity

- Immunity Can Be Waived by the Sending State
- Liability Insurance Can Be Required by the Receiving State



Jurisdiction

- Historical View

- Foreign military force, invited into a country without conditions is immune from jurisdiction of the receiving state unless its immunity is waived by the sending state

- Modern View

- Members of a visiting foreign military force is subject to civil and criminal jurisdiction of the receiving state unless waived by treaty (SOFA)



Status Of Force Agreement

- An agreement which defines the legal status of a visiting military force deployed in the territory of a friendly state.
 - Agreement may be bilateral or multilateral
 - Stand-alone agreement or Part of larger agreement
 - Immunities vary among agreements
 - NATO SOFA is the “grand-daddy” of SOFAs.



Status of Forces Agreement

- **An important SOFA provision addresses criminal jurisdiction**
- **Article VII of the NATO SOFA provides scheme of shared jurisdiction among the Receiving State (host nation) and the Sending State (the State sending forces into the host nation)**



Status of Forces Agreement

- Exclusive Jurisdiction in the Sending State
 - Conduct which constitutes an offense under the law of the Sending State, but not the Receiving State, is tried exclusively by the Sending State. [UA/AWOL]
- Exclusive Jurisdiction in the Receiving State
 - Conduct which constitutes an offense under the law of the Receiving State but not the Sending State, is tried exclusively by the Receiving State. [traffic offenses]



Status of Forces Agreement

- Concurrent Jurisdiction
 - All conduct which constitutes an offense under the laws of both the Receiving and Sending State, there is concurrent jurisdiction, with primary jurisdiction being assigned to one of the parties.



Status of Forces Agreement

- Primary Concurrent Jurisdiction in the Sending State
 - Acts where the Sending State or person from the Sending State is the victim
 - Acts or omissions which are done in the performance of official duty



Status of Forces Agreement

- Primary Concurrent Jurisdiction in the Receiving State
 - When primary concurrent jurisdiction is not in the Sending State, then primary jurisdiction rests with the Receiving State. *However, it is possible for the Receiving State to waive its primary jurisdiction*



Disciplinary Actions

- **Classroom Behavior**
 - Same standards of attendance and study as US students
 - Counseling Sessions
- **Serious Breaches**
 - Confrontations - IMSs and local authorities
 - Civil disturbances
 - Hostile acts toward other IMSs



Disciplinary Actions

- Serious Breaches

- Restore Order
- Report through chain of command
- Keep foreign officials informed
- Conduct Investigation - determine the facts
- Detention
 - Depends on seriousness of the incident



Disciplinary Actions

- **Serious Breaches**

- Installation commanders may recommend return to home country
- IMS dependents treated similarly
- Generally, foreign military service is responsible for punishment of military offenses



Liability Considerations

- ***Claims Against IMSs - Events Arising in the US***

- ***NATO SOFA - Article VIII***

- *each party waives claims against each other*
- *75%(Sending State) / 25% (Receiving State)*

- ***Non-NATO personnel - claimant may seek redress from the IMS or his/her government***



Liability Considerations

- **IMs are not equivalent to US military personnel, but they may be proper claimants under US law to file claim.**



Liability Considerations

- **Vehicle accident - Government Vehicle**
 - **Liability—exclusive remedy is against U.S. Government if driver within scope of duties (28 USC 2679)**
 - **Repair of Government vehicle—Report of Survey**

May be held liable for damage to Government property caused by gross negligence, willful misconduct, or deliberate unauthorized use



Liability Considerations

Private Vehicles

Should remind students they are required to obtain motor vehicle liability insurance coverage



Political Asylum

Protection and sanctuary granted by the U.S. government within its territorial jurisdiction or on the high seas to a foreign national who applies for such protection because of persecution for fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.



Political Asylum

- **DoD Directive 2000.11 sets out procedures for Asylum/Temporary Refuge**
- **Immigration and Nationalization Service, DoJ is lead agency**



Political Asylum Reporting Requirements

- **Senior commander at installation:**
 - Notifies MILDEP investigative organization
 - Notifies U.S. Immigration & Naturalization (INS)
 - Notifies MILDEP training activity
 - Protects foreign national pending transfer to INS
 - Informs cognizant MILDEP Operations Support Center



Political Asylum

IMS Consequences

- **IMSO should advise the IMS that Security Assistance sponsorship terminates once the IMS applies for political asylum.**
- **IMS should be removed from class once the IMS applies for political asylum**



Legal Assistance

- **IMSOs**

- **Cannot represent foreign students where attorney normally required**
- **Can assist with**
 - **Attorney recommendations**
 - **Motor vehicles, registration, driver's license, international driver's license**

- **JAG**

- **May provide legal assistance to foreign military members—although not required**



Summary

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Questions?

